IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4135 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAHIRUDEEN @ DABBAWALA GYASUDDIN SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4135 of 2002

MS JAYSHREE C BHATT for Petitioner No. 1

MR IM PANDYA, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 30/09/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act

of 1985') by the order dated 14-3-2002 passed by the Police Commissioner, Ahmedabad City and he has been declared as a cruel person.

2. Heard learned advocate for the petitioner and learned AGP for the State. Also perused the material on record. Learned advocate for the petitioner has restricted her arguments only on the point of delay in considering the representation and communicating its decision to the detenu. According to learned advocate for the petitioner, petitioner has made a representation on 1-4-2002 through advocate to concerned authority and though it has been rejected by the Home Department on 5-4-2002, communication dated 5-4-2002 was received by the detenu on 11-4-2002 and, therefore, there is a delay in considering the representation and communicating the same to detenu. Learned AGP has fairly admitted the same. Xerox copy of the letter dated 5-4-2002 of the Home Department is ordered to be taken on record. She has relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

> "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

3. In the present case, it appears that the representation dated 1-4-2002 made by the petitioner was decided by the Home Department on 5-4-2002. However, communication dated 5-4-2002 has been received by the detenu on 11-4-2002 and no explanation has been putforward by the authority explaining satisfactorily the delay caused in communicating the decision to the detenu.

4. Since no explanation has been putforth by the concerned authorities for not communicating the decision of rejection of his representation till 11-4-2002, in view of the aforesaid judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained.

5. The petition is allowed. The impugned order of detention dated 14-3-2002 passed against the detenu Jahirudeen @ Dabbawala Gyasuddin Shaikh is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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